85-1664

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

STATE OF ALABAMA,

Petitioner

vs.

COY PATRICK CROWE,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

AND

THE ALABAMA COURT OF CRIMINAL APPEALS

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ATTORNEYS FOR PETITIONER

QUESTION PRESENTED

Did the Alabama Supreme Court misconstrue Miranda v. Arizona by in effect holding that Miranda requires that the state must prove an express waiver of an accused's right to remain silent and right to counsel before the suspect may be interrogated and before any inculpatory statement obtained by custodial interrogation is admissible in evidence against him.

PARTIES

The caption contains the names of all parties to the proceedings in the courts below.

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OPINIONS BELOW

1. The opinion of the Alabama Court of Criminal Appeals affirming Respondent's conviction and sentence is not reported, but is reproduced as Appendix A.[1]

2. The opinion of the Alabama Supreme Court reversing Respondent's conviction is not reported, but is reproduced as Appendix B.

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[1]The appendix to this petition is separately bound pursuant to Rule 21.1(k).

JURISDICTION

The judgment of the Alabama Supreme Court which is sought to be reviewed was rendered December 13, 1985. See Appendix B. Petitioner's timely application for rehearing was denied without opinion on February 7, 1986. See Appendix C. This petition is filed within sixty (60) days of that denial as permitted by Rule 20.4.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution:

> "...nor shall [any person] be compelled in any criminal case to be a witness against himself... ."

The Sixth Amendment to the United States Constitution:

> "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

STATEMENT OF THE CASE

The Facts

The following relevant facts are quoted from the opinion of the Alabama Court of Criminal Appeals, Appendix A at pp. 8a-9a:

> Stanley Carr...was an agent employed by the F.B.I. On December 11, 1982, he and his partner, Gwin Hutfer, spotted [Respondent] at a Shoney's restaurant in Nashville, Tennessee. They ordered [Respondent] to stop, but [Respondent] got in his car and attempted to escape. The

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[2]The facts recited are generally taken from the opinions in the courts below, which are reproduced in the Appendix. Reference therefore will be made to the appropriate portions of the Appendix. References to pages in the trial court record will be designated by "R".

agents shot the tires of [Respondent's] car and he skidded to a stop in the parking lot. [Respondent] was arrested. About fifteen minutes after this, other F.B.I. agents arrived and [Respondent] was read his Miranda warnings. [Respondent] was [then] placed in a car to be transported to the Nashville Jail.***

The further following relevant facts are quoted from the opinion of the Alabama Supreme Court, Appendix B at pp. 98a-104a:

The pertinent portion of [Agent] Carr's testimony follows:

Q. Immediately after you had effected the arrest there in Shoney's, I'll ask you whether

or not there were other agents who came up or who were present from the local office there in Nashville?

A. Yes, sir, there were. I don't know exact time but maybe within ten to fifteen minutes other agents arrived on the scene.

Q. Did one or more of those agents in your presence and Mr. Hutfer's presence advise the defendant of the following: That he had a right to be silent. That if he spoke anything he said could be used against him. That he had a right to a lawyer. And if he couldn't afford a lawyer one would be appointed before any questioning? That or that in substance?

A. Yes. He read the Miranda warning to him.

Q. Was that substantially it, what I have just told you?

A. Yes, sir.

Q. Subsequent to Coy Patrick Crowe, the defendant, being given his Miranda warning, did you and Mr. Hutfer then take him somewhere in a vehicle yourselves?

A. Yes. He was placed in a bureau vehicle and transported from the scene of the arrest to downtown Nashville area.

Q. During that drive and after he had been read about his constitutional rights and all of that, during that drive from the restaurant to the jail, I'll ask you whether or not the

defendant entered into some voluntary conversation or initiated some conversation with you and Agent Hutfer; would that be true?

MR. JOHNSON: I object to the form of the question, Judge.

THE COURT: Sustained. You can ask him if he questioned him or anything.

Q. Did he or did he not initiate a conversation with you?

A. Yes, he did initiate a conversation with us; right.

Q. If you would tell the ladies and gentlemen of the jury and the Judge,

please, sir, what he said to you and what you and the other agent said to him, as best you remember -- and if you made any notes you can refresh your recollection if you wish.
A. He stated or asked if he would be going back to Winston County in Alabama. And I told him at that point that he subsequently -- or initially he would be going back sometime down the road. He would be going back sometime down the road. He would be going back there to stand trial for the charges that he was arrested for. At that point he made the statement that he was afraid to go back there, that he feared

to go back, because he might be mistreated or even killed by the local authorities there. At that point I made the statement, "What about the deputy that you wasted there." And he stated --

MR. WILKINSON: Yes, sir.

A. He stated, "I can't bring him back or do anything about that now." When he stated that he hung his head a little bit like he had remorse really and made that statement. Then he went on to state that he expected to get life in connection with this shooting.

MR. JOHNSON: Judge, I object to this.

MR. WILKINSON: Part of the conversation.

THE COURT: Overruled.

Agent Hutfer then testified as follows:

Q. At that point did you take him into custody, Mr. Hutfer?

A. Yes, sir.

Q. Did some other agents come up or were they present at the end of this action who were resident agents there in Nashville?

A. Very short time after that one of the Nashville agents arrived.

Q. Before you left the scene with the defendant, did one of these other agents in the presence of you and/or Mr. Carr give to the defendant what is

commonly known as his Miranda right, or right under the Miranda decision like the right to a lawyer and remain silent?

A. Yes, sir. One of the Nashville agents.

Q. After that was done, I'll ask you whether or not you or your partner took the defendant from Shoney's there where you had effected the arrest to the jail?

A. Yes, sir.

Q. En route while you were traveling along, did the defendant initiate a conversation with you and your partner, say some things to you and say some things to him?

A. Yes, sir.

Q. All right. Did your partner actually take notes about the conversation?

A. Yes, sir. He was in the backseat with the subject.

Q. You were driving?

A. No, sir. The agent from Nashville was driving and I was riding in the right front.

Q. You didn't have occasion to take notes?

A. No, sir.

Q. Of your own recollection do you remember some of the things the defendant said and some of the things that were said to him?

A. Yes, sir.

Q. If you would give us your best judgment as to what you

recollect him saying to you and you all saying to him?

A. One of the first things I recall he said was that he appreciated -- I think his expression was not blowing me away. And I got the impression he felt like that maybe we or somebody else might have shot him instead of the tires. And he said he appreciated that. And he asked if he would be transported back to Winston County, Alabama. And we told him that he would be and we didn't know the time frame when he would be. And he indicated some uneasiness, considerable uneasiness, about going back to Winston County because he was afraid he would be mistreated

or maybe even killed. And at this point in time my partner asked him, "What about the deputy that you wasted in Winston County." And to the best of my recollection, I don't remember the exact words, but something to the effect I can't undo what's already been done. And there was some mention he made as to the fact that he would probably get life if he got back to Alabama to be tried. And that's basically all I remember.

Prior to the agents being called as witnesses, a motion to suppress defendant's statement was made by defense counsel, and after a hearing outside the presence of the jury, the court denied the motion.

The evidence given by the F.B.I. agents was uncontroverted.

Additionally, the following relevant facts appear in the trial court record:

Respondent was 24 years of age at the time of his arrest. (R. 1840) Although respondent claimed to have only an eighth-grade education (R. 1832), he has the vocabulary, verbal skills, and writing skills of a fairly well-educated individual. Evidence of these skills can be seen by reviewing the motion for new trial hearing at which Respondent acted as his own co-counsel, examining witnesses and making legal arguments to the court (R. 1646-1833); by reviewing two letters written to the trial judge by Respondent (R. 1984-85, 2026-27); and by reviewing the various motions filed pro-se by Respondent. By way of example of Respondent's language and writing

skills, the content of Respondent's two letters to the trial judge (which are in cursive writing) are reproduced here:

12-20-83

Dear Judge Burney,

I am writing to let you know in advance that I am planning on putting forth another motion when I come back to court for sentencing. I am letting you know because I don't want you to think I am just trying to disrupt the court as the District Attorney claimed the last time.

Also I feel like I have an obligation to myself to let you know I am unhappy with the attorney who has been appointed to my case. He came and talked to me once at the jail for

about 30 minutes. At that time he told me to write him when I come back to Kilby and we would keep in touch with each other in that way. Well Judge I wrote him the day I was brought down here and he has never answered. I also wrote him again the 2nd of Dec. and he never answered it either. I was asking him about issues I feel could be important to my case. I think at least the man should answer my letters. So I have went ahead in preparing the motion on my own, without assistance, not because I wanted to but because I have no choice. Considering that I have only an 8th grade education I feel it is

inadequate and crude compared to what a learned lawyer could have prepared.

Sincerely,

/s/ Coy P. Crowe

(R. 1984-1985)

3/28/84

Coy P. Crowe 2-440
P. O. Box 37
Holman Station, AL 36503

The Honorable Billy C. Burney:

I would like for you to grant my motion to act as co-counsel so I can have the option to take part in any proceedings in my case if I desire. Also I am under the impression that for me to file any motions in my case I have

to have co-counsel status to give them validity.

As you can see I filed a motion to subpoena witnesses. Although I have written to my attorney Mr. Sheldon Perhacs and requested him to have all the witnesses I listed in my motion (except one) subpoenaed, I haven't received word from him whether he did in fact have them subpoenaed. As a matter of fact I've gotten the impression that he feels these witnesses are not needed. The reason I say that is because I received a visitor the 15th of March and told her when she goes through Birmingham on her way home to stop and call Mr. Perhacs and give him the name

of a witness that I forgot to put on the list I sent to him. He laughed at her and told her this witness was not necessary and this was not a new trial, just a formal hearing. I also realize this is not a trial, but only a hearing on my motion for new trial. But in order for me to have my motion for new trial granted I will have to prove my first trial was not fair by presenting witnesses and evidence to substantiate the allegations in my motion. I think all the witnesses I've listed are necessary in order for me to have full and complete hearing and not just a formality.

I wrote Mr. Perhacs and let him know what I expect the witnesses to testify to. I do so again in my motion to subpoena witnesses.

I also wish to state that I do not wish my right to be present at this hearing waived by my attorney.

Respectfully,

/s/ Coy P. Crowe

(R. 2026-2027)

Lastly appearing in the record and relevant to the inquiry here are Respondent's prior contacts with law enforcement. When he was arrested in Nashville by the F.B.I. agents, Respondent already had over 30 prior arrests as is shown by the pre-sentence investigation report which the trial court found to be accurate and which was

made a part of the record. (R. 1996, Sentencing Exhibit "E".)

Proceedings Below

Respondent was indicted July 18, 1983, for the capital offense of murder of a deputy sheriff while the deputy was on duty in violation of Code of Alabama 1975, §13A-5-40(a)(5). (R. 1837-38) Trial commenced on September 19, 1983. (R. 258) At trial, Respondent challenged the admissibility of statements he made to two F.B.I. agents shortly after he was arrested in Nashville, Tennessee, on December 11, 1982. (R. 587-601) The testimony of the two F.B.I. agents concerning the circumstances surrounding Respondent making an inculpatory statement to them was not controverted by Respondent.

After hearing evidence on the motion to suppress outside the jury's presence,

the trial judge ruled the statements made by Respondent were admissible. (R. 601)

Respondent was subsequently convicted. (R. 1440) A sentence hearing was held before the jury; after hearing the evidence and considering the aggravating and mitigating circumstances, the jury unanimously recommended a sentence of life without parole. (R. 1561) The trial court, after a separate hearing, rejected the jury's recommendation and sentenced Respondent to death. (R. 1638-1643)

On November 13, 1984, the Alabama Court of Criminal Appeals affirmed Respondents' conviction and sentence. (Appendix A).

On December 13, 1985, the Alabama Supreme Court reversed the conviction. (Appendix B). The state timely applied for rehearing, and the rehearing was

denied without opinion on February 7, 1986. (Appendix C) In reversing the conviction, the Alabama Supreme Court held that although Respondent was given his Miranda warning before he made an inculpatory statement to the F.B.I. agents shortly after his arrest, the statement came as a result of custodial interrogation or the functional equivalent of interrogation but that there was no evidence in the record that Respondent waived his right to remain silent or his right to an attorney. (Appendix B).

In finding the state had not met its burden of proving a knowing, intelligent and voluntary waiver of his Miranda rights, the court stated:

> ***there is not one shred of evidence that [Respondent] ever waived his rights under Miranda. Not only is there no evidence of waiver in the agents' testimony quoted herein, but we have searched

> the record, pursuant to Rule 45A, A.R.App.P., and have not found even a scintilla of evidence that defendant waived his right to remain silent or to have an attorney present during questioning.***
> (Appendix B, pp. 110a-111a)

REASONS FOR GRANTING THE WRIT

The Decision Below Misconstrues this Court's Decision in Miranda v. Arizona by in Effect Holding That Miranda Requires the State to Prove An Accused Expressly Waived His Miranda Rights Before He May Be Interrogated And Before Any Inculpatory Statement Obtained by Custodial Interrogation Is Inadmissible In Evidence Against Him.

There is clearly a good deal of evidence both from the testimony of the F.B.I. agents and elsewhere in the record which would support findings that Respondent understood the Miranda warning and that, although implicitly, he knowingly and voluntarily waived his right to remain silent and his right to

an attorney by initiating a generalized conversation about the charges against him. Therefore, the finding by the Alabama Supreme Court that the record contains neither a "shred" nor a "scintilla" of evidence that Respondent waived his Miranda rights can only be construed as holding the state must show an express waiver before any custodial interrogation is permitted, and can only be construed as holding that absent a showing of an express waiver, any statement obtained as a result of custodial interrogation (in this instance but a single question) is inadmissible. Because there clearly is evidence of an implicit waiver, a finding by the Alabama Supreme Court that there is absolutely no evidence of a waiver necessarily means that Court construes Miranda to require an express waiver in all instances.

The effective holding by the Alabama Supreme Court puts an incorrect construction on Miranda.

Miranda does not prohibit custodial interrogation even where there is no evidence of either an express waiver or an implicit waiver. In order for interrogation to be prohibited under Miranda, the accused must in some manner indicate he wants to invoke his right to remain silent or his right to counsel. Miranda v. Arizona, 384 U.S. 437, 473-74 (1966); United States v. Bosby, 675 F. 2d 1174 n. 13 (11th Cir. 1982); United States v. Rice, 652 F. 2d 521, 527 (5th Cir. 1981); Gorman v. Tranzer, 760 F. 2d 786, 795 (7th Cir. 1985). Nor does Miranda require the interrogator to ask the suspect whether the latter understood his rights. United States v. Hall, 724 F. 2d 1055, 1059 (2nd Cir. 1983).

Sullivan v. Alabama, 666 F. 2d 478 (11th Cir. 1982). Elaboration of the rights is not required. United States v. Isom, 588 F. 2d 858, 862 (2nd Cir. 1978)

Whether a suspect who incriminates himself as a result of custodial interrogation has knowingly and voluntarily waived his rights to remain silent and to have counsel must be determined from the totality of the circumstances surrounding the interrogation. Fare v. Michael C., 442 U.S. 707, 724-25 (1979).

In determining whether a suspect understood his rights, his age, background, experience, and intelligence are to be considered, North Carolina v. Butler, 441 U.S. 369, 374-75 (1979), including previous experience with police. Fare v. Michael C., 442 U.S. at 726; United States v. Hall, 724 F. 2d

1055, 1059 (2nd Cir. 1983). A relevant consideration in determining whether a defendant understood his Miranda warning is whether there is any evidence in the record indicating the defendant did not understand the warning. Fare v. Michael C., 442 U.S. at 726. And the defendant is the person in the best position to give evidence as to understanding. United States v. Hall, 724 F. 2d at 1059, 60; United States v. Foskey, 636 F. 2d 517, 522 (D.C. Cir. 1980).

A waiver of Miranda rights need not be express but may be inferred from the actions and words of the suspect. North Carolina v. Butler, 411 U.S. at 373.

A fact that must be considered in assessing the totality of the circumstances is where the suspect initiates a conversation with the police and evinces a desire on the part of the

suspect to generally discuss the case. Oregon v. Bradshaw, 462 U.S. 1039, 1045-46 (1983).

In the case at bar, we have an intelligent, literate, 24-year-old who had extensive experience with police custody. There was no evidence of threats, coercion, or inducements. He had been given a Miranda warning but had not been interrogated. He did not invoke his rights in any manner. He had been in police custody only a short time, and he initiated a conversation that had clear reference to the charges against him, evidencing a willingness to talk about the case. In response to statements made by Respondent, the F.B.I. agent made a single comment which amounted to "interrogation," and Respondent made an incriminating reply. At the suppression hearing, Respondent did not give any

evidence, and the testimony of the F.B.I. agents as to the circumstances under which the statement was made is uncontradicted. Too, there is no evidence in the record that Respondent did not understand the Miranda warning. Yet the Alabama Supreme Court found there was not a shred or scintilla of evidence Respondent waived his Miranda rights. This finding by the Court below can only be viewed as construing Miranda to require an express waiver before any statement made in response to police questioning is admissible.

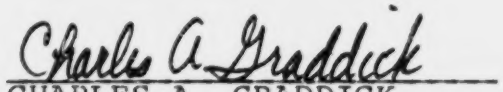
However, from the totality of the circumstances, it is clear Respondent knowingly and voluntarily waived his rights, though implicitly, when he began a generalized conversation about the charges against him. Cf. United States v. Morrow, 731 F. 2d 233 (4th Cir. 1984);

United States v. Madison, 689 F. 2d 1300 (7th Cir. 1981); Sterling v. Wyrick, 419 F. Supp. 80 (D.C. Mo. 1976). Therefore, the inculpatory statement made by Respondent in response to the single question asked by the F.B.I. agent was properly admitted at trial.

CONCLUSION

Because the Alabama Supreme Court has incorrectly construed Miranda v. Arizona to require an express waiver of the right to remain silent and the right to counsel, the Court should grant certiorari in this case and reverse the decision of the Alabama Supreme Court.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Rivard D. Melson, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this 8th day of May, 1986, I did serve a copy of this petition and a copy of the accompanying appendix on Respondent by placing same in the United States Mail, first class postage prepaid, and properly addressed to the counsel of record for Respondent as follows:

Hon. John L. Carroll
Attorney at Law
Mercer University Law School
Macon, Georgia 31207

I further certify I have served all parties required to be served.

Rivard Melson

RIVARD MELSON
ASSISTANT ALABAMA ATTORNEY GENERAL